

2001 NATIONAL PARK SERVICE MANAGEMENT POLICIES

OVERSIGHT HEARING

BEFORE THE
SUBCOMMITTEE ON NATIONAL PARKS, RECREATION,
AND PUBLIC LANDS

OF THE
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

April 25, 2002

Serial No. 107-109

Printed for the use of the Committee on Resources



Available via the World Wide Web: <http://www.access.gpo.gov/congress/house>
or
Committee address: <http://resourcescommittee.house.gov>

U.S. GOVERNMENT PRINTING OFFICE

78-924 PS

WASHINGTON : 2002

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON RESOURCES

JAMES V. HANSEN, Utah, *Chairman*
NICK J. RAHALL II, West Virginia, *Ranking Democrat Member*

Don Young, Alaska, <i>Vice Chairman</i>	George Miller, California
W.J. "Billy" Tauzin, Louisiana	Edward J. Markey, Massachusetts
Jim Saxton, New Jersey	Dale E. Kildee, Michigan
Elton Gallegly, California	Peter A. DeFazio, Oregon
John J. Duncan, Jr., Tennessee	Eni F.H. Faleomavaega, American Samoa
Joel Hefley, Colorado	Neil Abercrombie, Hawaii
Wayne T. Gilchrest, Maryland	Solomon P. Ortiz, Texas
Ken Calvert, California	Frank Pallone, Jr., New Jersey
Scott McInnis, Colorado	Calvin M. Dooley, California
Richard W. Pombo, California	Robert A. Underwood, Guam
Barbara Cubin, Wyoming	Adam Smith, Washington
George Radanovich, California	Donna M. Christensen, Virgin Islands
Walter B. Jones, Jr., North Carolina	Ron Kind, Wisconsin
Mac Thornberry, Texas	Jay Inslee, Washington
Chris Cannon, Utah	Grace F. Napolitano, California
John E. Peterson, Pennsylvania	Tom Udall, New Mexico
Bob Schaffer, Colorado	Mark Udall, Colorado
Jim Gibbons, Nevada	Rush D. Holt, New Jersey
Mark E. Souder, Indiana	James P. McGovern, Massachusetts
Greg Walden, Oregon	Anibal Acevedo-Vila, Puerto Rico
Michael K. Simpson, Idaho	Hilda L. Solis, California
Thomas G. Tancredo, Colorado	Brad Carson, Oklahoma
J.D. Hayworth, Arizona	Betty McCollum, Minnesota
C.L. "Butch" Otter, Idaho	
Tom Osborne, Nebraska	
Jeff Flake, Arizona	
Dennis R. Rehberg, Montana	

Tim Stewart, *Chief of Staff*
Lisa Pittman, *Chief Counsel/Deputy Chief of Staff*
Steven T. Petersen, *Deputy Chief Counsel*
Michael S. Twinchek, *Chief Clerk*
James H. Zoia, *Democrat Staff Director*
Jeffrey P. Petrich, *Democrat Chief Counsel*

SUBCOMMITTEE ON NATIONAL PARKS, RECREATION,
AND PUBLIC LANDS

GEORGE P. RADANOVICH, California, *Chairman*

DONNA M. CHRISTENSEN, Virgin Islands *Ranking Democrat Member*

Elton Gallegly, California	Dale E. Kildee, Michigan
John J. Duncan, Jr., Tennessee	Eni F.H. Faleomavaega, American Samoa
Joel Hefley, Colorado	Frank Pallone, Jr., New Jersey
Wayne T. Gilchrest, Maryland	Tom Udall, New Mexico
Walter B. Jones, Jr., North Carolina,	Mark Udall, Colorado
<i>Vice Chairman</i>	Rush D. Holt, New Jersey
Mac Thornberry, Texas	James P. McGovern, Massachusetts
Chris Cannon, Utah	Anibal Acevedo-Vila, Puerto Rico
Bob Schaffer, Colorado	Hilda L. Solis, California
Jim Gibbons, Nevada	Betty McCollum, Minnesota
Mark E. Souder, Indiana	
Michael K. Simpson, Idaho	
Thomas G. Tancredo, Colorado	

C O N T E N T S

	Page
Hearing held on April 25, 2002	1
Statement of Members:	
Christensen, Hon. Donna M., a Delegate in Congress from the Virgin Islands	4
Prepared statement of	5
Duncan, Hon. John J., a Representative in Congress from the State of Tennessee	5
Gallegly, Hon. Elton, a Representative in Congress from the State of California, Prepared statement of	32
Gilchrest, Hon. Wayne T., a Representative in Congress from the State of Maryland	7
McGovern, Hon. James P., a Representative in Congress from the State of Massachusetts	6
Radanovich, Hon. George P., a Representative in Congress from the State of California	1
Prepared statement of	3
Solis, Hon. Hilda L., a Representative in Congress from the State of California	7
Prepared statement of	7
Souder, Hon. Mark E., a Representative in Congress from the State of Indiana	6
Statement of Witnesses:	
Mainella, Fran, Director, National Park Service, U.S. Department of the Interior, Washington, D.C.	8
Prepared statement of	11
Additional materials supplied:	
Association of National Park Rangers, Statement submitted for the record	30
Kiernan, Thomas C., President, National Parks Conservation Association, Statement submitted for the record	32

OVERSIGHT HEARING ON THE 2001 NATIONAL PARK SERVICE MANAGEMENT POLICIES

**Thursday, April 25, 2002
U.S. House of Representatives
Subcommittee on National Parks, Recreation, and Public Lands
Committee on Resources
Washington, DC**

The Subcommittee met, pursuant to notice, at 2:03 p.m., in room 1324, Longworth House Office Building, Hon. George Radanovich [Chairman of the Subcommittee] presiding.

Mr. RADANOVICH. Good afternoon and welcome to today's hearing. Today, we are here to examine the 2001 National Park Service Management Policies. Before I begin, I would welcome the National Park Service Director, Fran Mainella, who is making her first appearance before the Subcommittee.

Ms. MAINELLA. I am very pleased to be here, Mr. Chairman, and thank you for inviting me. If it is possible, I would like to bring forth to sit at the table with me my Deputy Director, Randy Jones, and also my Associate for Natural Resources, Mike Soukup.

Mr. RADANOVICH. Not a problem. There being no objection, so ordered. I have to do that.

Ms. MAINELLA. I also have my other deputy, Don Murphy, behind me as well. I did want to have a good strong team here with us today.

Mr. RADANOVICH. Super. Welcome to the first appearance before the Committee. I understand it was your birthday yesterday. I want to wish you a happy birthday.

Ms. MAINELLA. Yes, sir, it was.

Mr. RADANOVICH. We will refrain from singing happy birthday.

Ms. MAINELLA. Thank you. Do not ask me how old now.

Mr. RADANOVICH. I am sure you will appreciate that.

Ms. MAINELLA. Thank you so much.

STATEMENT OF THE HON. GEORGE P. RADANOVICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. RADANOVICH. During the final days of the Clinton administration, the Park Service issued the new 2001 Management Policies, replacing those issued in 1988. And while a revision of some of the elements of the Management Policies may have been in order—indeed, most of the new handbook was not changed—there

are several areas in which the policies shift from the previous standard is very significant and of some concern.

For example, the 1988 policies that state Congress's mandate to the Park Service has been expressed as conserving resources while providing for the enjoyment by today's citizens in a manner that will leave them unimpaired for future generations. It goes on to say that there will inevitably be some tension between conservation of resources on the one hand and public enjoyment on the other.

The National Park Service is charged with the difficult task of achieving both and this balancing act is not unusual. Congress has repeatedly required Federal agencies to balance two competing principles. In fact, our nation was founded upon requirements in the Constitution to balance competing principles.

I am concerned that the new policies have discarded this balancing requirement. They appear to place the requirement to conserve park resources unimpaired far above the second component of that dual mandate. That is a very significant change from the direction given by Congress and from the policy direction relied upon by the Park personnel for decades.

While nobody would argue that the Park Service does not have an important responsibility to conserve Park resources, many aspects of these new policy changes will pose numerous and unforeseen management problems for the Park Service. In fact, superintendents have privately expressed to the Subcommittee considerable concern about the new policies and specifically about the new interpretations of the Organic Act.

Although it has only been a short time since the policies were issued, the new standards seem to open the Park Service up to considerable new legal jeopardy and unforeseen management problems. In addition, this new interpretation is inconsistent with the philosophy of balance enunciated many times by both the Secretary and the President of the United States.

I am also concerned that the testimony submitted by the Park Service indicates that the policy interpreting the Organic Act was changed to comply with the Federal Court's direction in *Southern Utah Wilderness Alliance v. Dabney*. Not only was this never required by the court, but the Park Service seems to be unaware that this decision was reversed in August of 2000 and remanded back to that judge by the Tenth Circuit Court of Appeals.

In fact, the Appeals Court's decision notes that the balancing act required in the 1988 Park Service policies was jettisoned by the Park Service after the original decision. The Appeals Court record clearly demonstrates their recognition that this new interpretation is a substantial rewrite of longstanding, recognized Park Service policy that has been in place for over 85 years.

Thus, today, we have a policy that was crafted to respond to judicial direction that was never given and remains in place despite the Appeals Court reversals. Given the fact that the Park Service conducted a substantive reassessment of the Organic Act and revised its policies as a result of this District Court decision, we will expect another substantive reassessment of the policy revision because the decision was reversed.

In addition, there are numerous other substantial changes in the Management Policies that need to be addressed. I look forward to

making the case that the Management Policies need to receive further attention and revision and I look forward to a healthy dialog on these issues between the Subcommittee and the Park Service.

Mr. RADANOVICH. With that, I will turn my attention now to the ranking member, Mrs. Christensen, for her opening statement. Donna?

[The prepared statement of Mr. Radanovich follows:]

Statement of The Honorable George P. Radanovich, a Representative in Congress from the State of California

Good afternoon. The hearing will come to order. Today we are here to examine the 2001 National Park Service Management Policies. Before I begin with my opening statement though, I would like to welcome National Park Service Director Fran Mainella to the Subcommittee today. This is her first appearance before the Subcommittee and we are pleased to have her here with us.

During the final days of the Clinton Administration, the Park Service issued the new 2001 Management Policies, replacing those issued in 1988. While a revision of some elements of the management policies may have been in order—indeed most of the new handbook has not changed—there are several areas in which the policy shift from the previous standard is very significant and concerning. For example, the 1988 policies state that, “Congress’s mandate to the Park Service has been expressed as conserving resources while providing for their enjoyment by today’s citizens in a manner that will leave them unimpaired for future generations.” It goes on to say, “There will inevitably be some tension between conservation of resources on the one hand and public enjoyment on the other. The National Park Service is charged with the difficult task of achieving both.” This balancing act is not unusual. Congress has repeatedly required federal agencies to balance two competing principles. In fact, our nation was founded upon requirements in the Constitution to balance competing principles.

I am deeply concerned that the new policies have discarded this balancing requirement. They very clearly place the requirement to conserve park resources unimpaired far and above the second component of that dual mandate. That is a very significant change from the direction given by Congress and, from the policy direction relied upon by park personnel for decades. While nobody would argue that the Park Service does not have an important responsibility to conserve park resources, many aspects of these new policy changes will pose numerous and unforeseen management problems for the Park Service.

In fact, park superintendents have privately expressed to the Subcommittee considerable concern about the new policies, and specifically about the new interpretation of the Organic Act. Although it has only been a short time since the policies were issued, the new standard seems to open the Park Service up to considerable new legal jeopardy and unforeseen management problems. In addition, this new interpretation is inconsistent with the philosophy of balance annunciated many times by both the Secretary and the President.

I am also concerned that the testimony submitted by the Park Service indicates that the policy interpreting the Organic Act was changed to comply with a federal court’s direction in *Southern Utah Wilderness Alliance v. Dabney*. Not only was this never required by the court, but the Park Service seems to be unaware that this decision was reversed in August of 2000 and remanded back to that judge by the 10th Circuit Court of Appeals. In fact, the Appeals Court decision notes that the balancing act, required in the 1988 Park Service policies, was jettisoned by the Park Service after the original decision. The Appeals Court record clearly demonstrates their recognition that this new interpretation is a substantial rewrite of long-standing recognized Park Service policy that has been in place for over 85 years.

Thus, today we have a policy that was crafted to respond to judicial direction that was never given, and remains in place despite the Appeals Court’s reversal. Given the fact that the Park Service conducted a substantive reassessment of the Organic Act and revised its policies as a result of this district court decision, we will expect another substantive reassessment and policy revision because the decision was reversed.

In addition, there are numerous other substantial changes in the Management Policies that need to be addressed. I look forward to making the case that the Management Policies need to receive further attention and revision and I look forward to a healthy dialogue on these issues between the Subcommittee and the Park Service.

I now turn to the Ranking Member, Mrs. Christensen, for an opening statement.

**STATEMENT OF THE HON. DONNA M. CHRISTENSEN, A
DELEGATE IN CONGRESS FROM THE VIRGIN ISLANDS**

Mrs. CHRISTENSEN. Thank you, Mr. Chairman. I, too, want to join you in welcoming Director Mainella to our hearing today and we look forward to your testimony.

I know that I can speak for all of my colleagues on the Subcommittee when I say that we appreciate the good working relationship that we have with the National Park Service and we look forward to continuing working together to protect and preserve our national parks. If my constituents were here, they would be shocked, because we do have some thorny issues at home, but the statement still stands.

Ms. MAINELLA. Thank you.

Mrs. CHRISTENSEN. The subject of today's oversight hearing, the National Park Service Management Policies 2001, was published by the National Park Service in December of 2000. As you know, Mr. Chairman and colleagues, the document is an attempt to synthesize requirements contained in the various authorities which control operation of the National Park System, including the U.S. Constitution, public laws, treaties, Executive Orders, regulations, directives, and others.

Once compiled, Management Policies is considered the basic service-wide policy document of the National Park Service and adherence to policy is mandatory unless specifically waived or modified by the Secretary, the Assistant Secretary, or the Director. It is our understanding that this most recent version of the Management Policies supercedes the previous decision published in 1988.

While development of the Management Policies is an internal process, the National Park Service is to be commended on its decision to provide an opportunity for public notice and comment on this edition, not once, but twice. After two comment periods, 60 days in 1998 and another 60 days in 1999, the National Park Service received approximately 125 public comments. Apparently, Chairman Hansen was among those who chose to provide input into this edition of the Management Policies prior to its publication.

Given that this document is designed to cover literally every aspect of the National Park System, we have had some difficulty, though, in determining the precise purpose of today's meeting. We can only assume that there are members who have some concerns regarding particular aspects of the Management Policies and feel that input from the new Director would be useful. Such a dialog is very appropriate, but I just wanted to make one final point in closing.

The National Park Service Management Policies 2001 is simply a reflection of the law governing the National Park Service and in our view it is an accurate one. It is my feeling that if the Subcommittee is troubled by some aspect of the operation of the National Park Service, it would be better for members to seek out the relevant underlying statute rather than seeking changes in a document simply intended to synthesize them.

Again, I want to join you, Mr. Chairman, in welcoming our Director here today, and again, we look forward to hearing from you.
[The prepared statement of Mrs. Christensen follows:]

**Statement of The Honorable Donna Christensen, a Delegate in Congress
from the Virgin Islands**

Mr. Chairman, we join you in welcoming Director Mainella to the hearing today and look forward to her testimony. I know I speak for all of my colleagues on the Subcommittee when I say that we appreciate the good working relationship we have with the National Park Service and we look forward to continuing working together to protect and preserve our National Parks.

The subject of today's oversight hearing, the National Park Service Management Policies 2001, was published by the NPS in December of 2000. As you know Mr. Chairman, the document is an attempt to synthesize requirements contained in the various authorities which control operation of the National Park System, including the U.S. Constitution, public laws, treaties, Executive Orders, regulations, directives and others. Once compiled, Management Policies is considered the "basic, Service-wide, policy document of the National Park Service," and "adherence to policy is mandatory unless specifically waived or modified by the Secretary, the Assistant Secretary, or the Director." It is our understanding that this most recent version of the Management Policies supercedes the previous edition, published in 1988.

While development of the Management Policies is an internal process, the NPS is to be commended on its decision to provide an opportunity for public notice and comment on this edition, not once but twice. After two comment periods, 60 days in 1998 and another 60 days in 1999, NPS received approximately 125 public comments. Apparently, Chairman Hansen was among those who chose to provide input into this edition of the Management Policies prior to its publication.

Given that this document is designed to cover literally every aspect of the National Park System, we have had some difficulty determining the precise purpose of today's meeting. We can only assume that there are Members who have concerns regarding particular aspects of the Management Policies and feel that input from the new Director will be useful. Such a dialogue is perfectly appropriate, but we feel compelled to make a final point in closing.

The NPS Management Policies 2001 is simply a reflection of the law governing the NPS and, in our view, it is an accurate one. If the Subcommittee is troubled by some aspect of the operation of the National Park System, Members should seek out the relevant, underlying statute rather than seeking changes in a document simply intended to synthesize them.

Again, we welcome the Director here today and look forward to her testimony.

Ms. MAINELLA. Thank you so much.

Mr. RADANOVICH. Thank you very much, Mrs. Christensen.

Are there any other opening statements or brief comments that anybody else on the panel would like to make?

Mr. DUNCAN. Yes.

Mr. RADANOVICH. Mr. Duncan?

**STATEMENT OF THE HON. JOHN J. DUNCAN, JR., A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF
TENNESSEE**

Mr. DUNCAN. Mr. Chairman, thank you very much for calling this hearing. I do not have a formal or lengthy opening statement. I just want to also welcome Director Mainella to the Subcommittee. I have heard many good things about her career and the work that she has done over the years, and as some of you know, I represent the most heavily visited national park in the whole system, the Great Smoky Mountains, or I represent half of it, anyway, what is sometimes referred to as the quiet side of the Smokies. We have between nine and ten million visitors each year and I was pleased

that the Director, I think, made her first visit after she became Director—

Ms. MAINELLA. I did.

Mr. DUNCAN. —to the other side of the Smokies, but we are always pleased to have you there any time you want to come, Director Mainella.

My bias, though, because I do represent half of the Smokies is toward trying to do more for the parks that we already have rather than expanding the number of parks in any big way or expanding the areas under the Parks' jurisdiction. I think we need to take care of the parks that we already have, and that is sort of where I am coming from.

But we will certainly be looking for ways to work with you in every way possible and we are pleased that you are here today. Thank you very much, Mr. Chairman.

Mr. RADANOVICH. Mr. Souder?

STATEMENT OF THE HON. MARK E. SOUDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. SOUDER. Some of my line of questioning is going to be represented in this kind of attitude and I want to make sure I get it on the record in the beginning. As I visited many of the parks around the country, one of the fundamental problems which was built into the National Park Service is this balance. But we have further confused that by having all types of units in the Park Service, from recreation areas, to lake shores, to parks that are predominately wilderness, to heritage areas where the park is partly involved, and historic sites, to preserves where we still have ranching.

I think some of the confusion could be sorted through if it was not a one-size-fits all document, and I am going to be asking some questions along that line. So I thank the Chairman.

Mr. RADANOVICH. Thank you, Mr. Souder.

Are there any other comments? Jim?

STATEMENT OF THE HON. JAMES P. McGOVERN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. McGOVERN. Yes. I just want to join with my colleagues here in welcoming you here today. I am from Massachusetts. A lot of my constituents go to other States to enjoy national parks, but nonetheless, I have to tell you that I probably get more mail on the preservation of national parks and the appropriate upkeep of these parks than on almost any other environmental issue out there.

I think most of the people I represent believe that one important policy for you as Director to uphold is that when conflicts arise between conservation and enjoyment, that conservation takes precedence and is predominant. So I hope that you will address some of that when you talk here today. People are very, very concerned about conservation and it is an issue that I am sure that others have asked about, but I just want to put that out on the record in the beginning. Thank you.

Mr. RADANOVICH. Anybody else for opening comments? Ms. Solis?

STATEMENT OF THE HON. HILDA L. SOLIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. SOLIS. Yes. Thank you, Mr. Chair. I know that we have a lot of information we will be hearing from you today, and I would like to hear about where the National Park Service can probably play a bigger role in urban communities, particularly where under-represented communities are, and I mean Latino and Asian communities. We have different parks that are already dedicated to different Native American and to other individuals in our history, but those communities are still not a focus of any attention.

And then also with respect to the 1916 Organic Act and the 1978 amendment to the Act, the Congress made clear that the National Park Service would keep the parks in conditions that are unimpaired. I would like to see what your thoughts are on that in terms of how you will continue to carry forth this law. Thank you.

Mr. RADANOVICH. Thank you very much.

[The prepared statement of Ms. Solis follows:]

Statement of The Honorable Hilda L. Solis, a Representative in Congress from the State of California

In the 1916 Organic Act and the 1978 Amendment to this Act, Congress made clear that the National Park Service must keep the parks in a condition that is "unimpaired for the enjoyment of future generations." The Bush Administration, and Administrations of the past, have failed to provide the National Park Service with the financial tools needed to achieve this goal.

I look forward to hearing from our witnesses today about how they are making sure that our parks are "unimpaired" and I hope they will provide us with ways to help you meet this goal in the future.

Mr. RADANOVICH. A statement from Mr. Gilchrest?

STATEMENT OF THE HON. WAYNE T. GILCHREST, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. GILCHREST. Just briefly. As we go through this hearing and you make decisions in the months and years ahead, my perspective, which I think is reflected by the members here today, is to err on the side of conservation whenever there is an issue of conflict, no matter how volatile that might be, because I do not think anywhere in any of the acts that preceded us to develop the National Park System there is any mention that we should emphasize or give credence to a narrow business interest for a group of people or an enterprise. But the Park Service, much to the thanks of Teddy Roosevelt and people like that, wanted to preserve these lands for all time for people to enjoy in its natural state.

We appreciate you coming here today and giving your testimony. Thank you.

Ms. MAINELLA. Thank you, sir.

Mr. RADANOVICH. Thank you very much.

Before you begin, Director, I just want to make everybody aware of the fact that there will be some votes coming up, probably at about 2:30. It looks like there could be an amendment vote, a motion to recommit, and final passage, so there will be either two or three votes coming up around then. Of course, we will adjourn and come back and continue the hearing.

With that, welcome, Director Mainella, and you may begin your opening statement.

STATEMENT OF FRAN MAINELLA, DIRECTOR, NATIONAL PARK SERVICE, WASHINGTON, D.C.; ACCOMPANIED BY DURAND "RANDY" JONES, DEPUTY DIRECTOR, NATIONAL PARK SERVICE; DON MURPHY, DEPUTY DIRECTOR, NATIONAL PARK SERVICE; AND MICHAEL SOUKUP, ASSOCIATE DIRECTOR FOR NATURAL RESOURCES, NATIONAL PARK SERVICE

Ms. MAINELLA. Thank you, Mr. Chairman. I would like to summarize my written statement that has been submitted to you for the record.

Mr. Chairman, thank you again for the opportunity to appear before this Subcommittee to discuss the National Park Service Management Policies. Our policies play a vital role in helping us make intelligent and fair decisions about the national parks and I welcome this opportunity to explain what the policies are, how we developed them, and how we apply them to our daily management of the National Park System. I want to describe how we are ensuring that our Park superintendents implement the changes found in the Management Policies in 2001 appropriately and consistently. I will also welcome the opportunity to hear any concerns you may have about how we developed and how we apply the current policies.

The policies are guiding principles or procedures that set the framework and provide consistent direction for management decisions. Throughout our policies, we try to translate laws, regulations, Executive Orders, and Secretarial Orders in a cohesive manner that all our employees can understand and implement as intended. Second-level directives, known as Director's Orders, supplement our Management Policies, and in some case a third level, such as a handbook or reference manual, is required, just to encourage clarity.

Congress intended and visitors expect that parks will be managed to the highest standard of consistent and professional care. Visitors rightly expect that we have appropriate opportunities to enjoy park resources and values. Management Policies help bring a reasonable degree of order and discipline to the decisionmaking process, which is important in a dispersed organization with 385 diverse park units.

Our written policies are also a means of keeping both the Congress and the public informed on how we implement the laws that govern parks. Policies provide an understanding of the ground rules by which the Service manages parks.

Policies to guide park management have been with us a long time and many of the fundamentals have remained the same. Since 1918, there have been 13 documents issued by the Secretary or the Director that provided guidance on the administration of the National Park units. The current form, known as Management Policies, first appeared in 1978 and have been revised four times since then.

The 2001 issue of Management Policies was developed through an internal effort that began in 1994 and involved extensive field review, consultation, and an opportunity for public review and comment. Most of our policies offer flexibility to deal with special cir-

cumstances. If a park manager has a compelling reason why he or she cannot comply with a particular policy, the Secretary, Assistant Secretary, or Director may grant a waiver in writing, so long as the waiver is consistent with the statutory law and other higher authorities, such as the Presidential proclamations and Executive Orders.

As we looked at the revision of the Management Policies from 1988, the policies have not changed dramatically. For example, the new edition explains in more detail the need for superintendents to be good neighbors by inviting participation in park planning and decisionmaking. There is also more detail and emphasis on the need for scientific management of park resources so that better decisions can be made and an increased emphasis on the administrative record which justifies the decisions made by park managers.

I think one issue of particular interest that was addressed in the 1998 and more fully explained in the 2001 edition is the responsibility imposed on the Service by the “no impairment” clause of the 1916 National Park Service Organic Act. This issue was dealt with in greater detail primarily because of a court case involving Canyonlands National Park. The Organic Act requires the Service to conserve park resources and values and provide for their enjoyment in such a manner and by such a means as will leave them unimpaired for the enjoyment of future generations.

This policy in Section 1.4 of the Management Policies essentially mirrors that requirement of the law and explains that impairment is an impact that, in the professional judgment of the responsible National Park Service manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of these resources or values. A significant change in how the National Park Service implements the impairment standard on a case-by-case basis is the integration of a question regarding impairment into the environmental impact evaluation that is already performed under the National Environmental Policy Act. This is a step that strengthens the administrative record and responds to the deficiencies found by the courts.

Ultimately, the decision as to whether the adverse impacts of an action reaches a threshold and becomes an impairment lies with the superintendent and also the regional director. To ensure we develop consistency in the implementation of the impairment standard, most, if not all, of the findings of impairment will be subject to the review at the national level.

The Service is going through an internal learning process as managers strive to meet their responsibilities under the policy. We are developing supplemental guidance to help all our employees better understand and implement the policy. Our planners and environmental coordinators have been instructed to monitor closely how the impairment issue is addressed in our planning and environmental documents and to coordinate with our Washington staff on any areas of uncertainty. We provide training and orientation of the “no impairment” policy at every level of the organization and at every opportunity.

Another important safeguard in implementing this policy is the Secretary’s four Cs program—conservation through consultation, cooperation, and communications. To ensure we carry out these

principles, I have asked our policy team to begin drafting a Director's Order that will address public participation and outreach for our management decisions. I believe that implementing the "no impairment" policy under the guidance of the Secretary's four C principles will help ensure that our actions comply with the law, protect park resources, and guarantee the American public appropriate opportunities to enjoy their parks.

I would like to clarify, if I may, any misunderstandings that may arise from the "no impairment" policy. It does not mean that the Service will not provide any new facilities in parks, nor that we will not allow reasonable public use and enjoyment of the parks. While visitors' uses may cause impacts, we are confident that we are managing over 275 million visits a year in a manner that leaves our national parks unimpaired and the public at large supports our efforts.

While we must try to avoid impacts on parks, there are times when there is a compelling reason to develop a facility or allow an activity even though it may have an adverse impact on the parks environment. While I have been Director, the policy has not been unreasonably applied. It has not brought a halt to the construction of roads, visitors' centers, or other amenities to serve park visitors, nor has it curtailed visitor use and enjoyment. If the Subcommittee is aware of any situation where it believes the "no impairment" policy has led to an inappropriate decision, I would be pleased to review it and avoid any misapplication of the policy.

One area that may lead to confusion is the distinction between appropriate uses and the impairment of resources. The term "appropriate use" is key to the way we manage and have enjoyment of the National Park System. We are constantly educating our superintendents and other appropriate individuals about appropriate use versus impairment, because they are different.

National parks belong to all Americans. All Americans should feel welcome to experience the parks. Visitors to the National Park System today continue to enjoy a wide range of recreational activities where appropriate and as determined by legislation or a unit's general management plan. These activities include biking, wildlife viewing, boating, canoeing, sailing, personal watercraft, cross country skiing, downhill skiing, fishing, golfing, hiking, horseback riding, mountain climbing, off-road vehicle use, orienteering, rock climbing, scuba diving, snowmobiling, and swimming.

We in the National Park Service appreciate Congress's past reminders that the enjoyment of parks today must not be at the expense of future generations. However, we also understand that some of the concerns Committee members have regarding the current management policies. With respect to the "no impairment" standard, we are developing supplemental guidance, expanding our training and orientation programs, reviewing our impairment findings at the national level, and keeping a better administrative record on all decisions. In addition, for all management decisions, we will be developing policy guidelines of public participation and outreach.

With your help, the Service will ensure that we today and our children tomorrow continue to enjoy the same quality of the nat-

ural and cultural and splendid scenic opportunities of our National Park System.

Mr. Chairman, thank you for the opportunity to provide you with this background information and for giving me the extended time to do so. This concludes my prepared remarks. I would be happy to answer any questions that you may have. Thank you.

Mr. RADANOVICH. Thank you very much, Director.

[The prepared statement of Ms. Mainella follows:]

**Statement of Fran Mainella, Director, National Park Service,
U.S. Department of the Interior**

Mr. Chairman, thank you for the opportunity to appear before your subcommittee to discuss the National Park Service's Management Policies. Our policies play a vital role in helping us make intelligent decisions about the national parks. I welcome this opportunity to explain what the policies are, how we develop them, and how we apply them to our daily management of the national park system. I also look forward to hearing any concerns you may have about how we develop and apply the current policies.

The Need for Management Policies

Policies are guiding principles or procedures that set the framework and provide consistent direction for management decisions. Through our policies, we try to translate laws, regulations, Executive orders, and Secretarial orders in a cohesive manner that all National Park Service employees can understand. These policies also keep Congress, the public, and interested stakeholders informed on how we will implement the laws that govern the parks. The Service has three tiers of policy that provide such guidance which include: Management Policies; Director's Orders; and Handbooks, Reference Manuals, and Other Documents.

The National Park Service's Management Policies provide the broadest level of guidance by helping to bring a reasonable degree of order, consistency, and discipline to the decision-making process. Such guidance is particularly important in a dispersed organization, like ours, which manages 385 diverse units of the National Park System across the United States. The Management Policies are available to the public and other interested parties on the National Park Service website at www.nps.gov/policy.

Policies to guide park management have been with us for a long time, and many of the fundamentals have remained the same. Since 1918, there have been 13 documents issued, by the Secretary or the Director, that provided guidance on the administration of National Park units. On each of these occasions, the policies have attempted to respond to changing times and the Service's changing needs. A similar effort may be appropriate if current policies are not providing park managers with a sufficient level of guidance or if improvements could be made to make the policies more effective.

Development of the Management Policies

Policy initiatives may develop as a sudden, urgent response to a specific problem or issue, through an evolutionary process as the Service gains experience in addressing a problem or issue, or as a response to legislative or court action. Occasionally, policy initiatives originate from individuals, local or state governments, and non-governmental organizations outside the Service who have a strong interest in how the parks are managed. Most often, however, Service-wide policy is developed through an internal effort involving field review, consultation with all levels of the organization, and an opportunity for public review and comment.

The 2001 Revision of the Management Policies

The most recent effort to update the 1988 Management Policies was triggered by a review undertaken in 1991 by the Park Service concerning its responsibilities and prospects for the future. This review included a symposium that brought together individuals from within and outside the government to look at the challenges facing the National Park Service in the new millennium. The symposium culminated in the 1992 publication: "Report of National Parks for the 21st Century—The Vail Agenda." The report included a finding that "if the National Park Service is to adequately meet the challenges before it, park system policy and management must be guided by a clear sense of its role and purpose." In response to the report, a Federal Register notice was published in June 1998, asking the public for their input on updating the 1988 policies. Over the next two years, two draft revisions to the 1988

policies were circulated throughout the Service for comment. A January 2000 Federal Register notice invited public comment on a third draft that was distributed to all the members of this subcommittee and to the public. The result of this effort is the 2001 edition of the National Park Service the Management Policies.

In the 2001 Management Policies, most of the policies in the 1988 edition have been retained, but a fuller explanation of certain policies is provided. Highlights of the 2001 Management Policies include new or improved management and planning concepts, new guidance on implementing recently-passed laws, and improved consultation with interested groups.

One aspect of the 2001 Management Policies of particular interest is the revisions that place greater emphasis on consultation with interested groups, such as gateway communities, community groups, traditional cultural groups, and Indian Tribal Governments. For example, the 2001 Management Policies emphasize that superintendents should act as good members of their community, by inviting participation in park planning and decision-making, and by being actively involved in the planning and regulatory activities of neighboring jurisdictions that may affect their parks. As you know, efforts to develop stronger partnerships with States, Tribes, local communities, and citizens are consistent with Secretary Norton's Four Cs Program—conservation through consultation, cooperation, and communication. We believe that more thoughtful policy decisions can be made if we work together toward our common goal of stewardship of the Nation's lands and resources.

The No-Impairment Provisions of the 2001 Management Policies

One issue of particular interest is the way 2001 Management Policies interprets the 1916 National Park Service Organic Act's no-impairment clause. The Organic Act requires the Service to conserve park resources and values and provide for their enjoyment "in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

The Service's detailed explanation of the no-impairment clause is found in section 1.4 of 2001 Management Policies (see attachment). The policy states that the Service is to conserve in an unimpaired condition all the resources and values in the parks for the enjoyment of those who are here today, and those who will follow in generations to come. It explains that impairment "is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values." Although section 1.4 does not explicitly define impairment, it does indicate that an impact is more likely to constitute an impairment if it affects a resource or value whose conservation is:

- Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park;
- Key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park; or
- Identified as a goal in the park's general management plan or other relevant NPS planning documents.

The National Park Service implements the standard on a case-by-case basis by integrating an impairment question into the environmental impact evaluation that is already performed under the National Environmental Policy Act (NEPA).

These provisions that address the no-impairment issue were refined during the 2001 revision of the Management Policies. At that time, as part of the National Park Service's review of its 1988 edition of the Management Policies, the question arose as to whether the 1988 provisions of the no-impairment clause provided adequate guidance to managers. The Service has grappled with the no-impairment clause for 85 years and had made diligent efforts to interpret Congressional intent in the Management Policies. However, several developments indicated that the Service needed to further clarify the impairment statement. First, some managers may have interpreted the clause to authorize a balancing act that would allow them to impair park resources if necessary to create opportunities for public use and enjoyment. Second, courts had ruled that while there is a balance between resource protection and public use, resource protection must be the "overarching concern."

On September 23, 1998, the District Court of Utah issued a decision on the impairment issue in *Southern Utah Wilderness Alliance v. Dabney, et al.* In this case, environmental groups challenged several aspects of Canyonlands National Park's Backcountry Management Plan including our decision to allow limited, permitted vehicle use of Salt Creek Road where there had previously been unlimited and uncontrolled use of the Road. The district court held that the Service had violated the 1916 Organic Act with regard to the impairment standard by allowing any vehicle use in the area. This was the first court decision to find that Service-permitted actions in a park violated our mandate to leave resources unimpaired for the enjoy-

ment of future generations. On appeal, the Tenth Circuit Court of Appeals noted that the Service did not have a final, adopted agency position addressing the question of when impairment occurs because the Management Policies were in the process of being revised.

Policy was later finalized which sought to clarify the impairment standard. The Service's first obligation is to make certain that the right of future generations to enjoy park resources and values are not compromised by the actions we take today. To ensure consistent implementation of the impairment standard, nearly all findings of impairment are subject to public comment and review.

The Impact of the No-Impairment Policy on Public Use and Enjoyment

Some people have characterized the no-impairment policy to mean that the Service will not provide any new facilities in the parks and will not allow reasonable public use and enjoyment of the parks, because doing so would always cause at least some degree of impairment. Such an interpretation mistakenly assumes that impacts on the environment are the same as impairments. The Service must try to avoid or mitigate adverse impacts on the parks, but there will be times when there is a compelling reason to develop a facility or allow an activity even though it may have an adverse impact on the park's environment.

One of the questions I was asked during my confirmation hearing was whether I agreed with the current Management Policies' interpretation of the Organic Act. My response was that it seems reasonable that the Service would not allow activities that would deprive future generations of the ability to enjoy park resources or values. As Director, I believe that the no-impairment policy has not brought a halt to the construction of roads, visitor centers and other amenities to serve park visitors. The policy should be viewed as a step toward making the parks a welcome place for visitors to enjoy activities that are uniquely suited and appropriate to the special resources and values that draw them to the parks.

However, if the Subcommittee is aware of any situation where it believes the no-impairment policy has led to an inappropriate decision, I would be pleased to review it with you. In the meantime, I would like to assure you that certain measures are in place to monitor implementation of the no-impairment policy and help ensure that it is not being unreasonably applied. Superintendents must now affirm in writing in their environmental assessments and impact statements that proposed actions will not impair park resources and values. In determining whether an impact would harm park resources and values, the superintendent must consider a variety of factors, including:

- The particular resources and values that would be affected;
- The severity, duration, and timing of the impact;
- The direct and indirect effects of the impact;
- The cumulative effects of the impact in question and other impacts; and
- Any specific provisions of the park's enabling legislation or proclamation.

Regional directors must sign the environmental assessments and impact statements after evaluating whether the proposed action would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. Our planners and regional environmental coordinators have been instructed to monitor closely how the impairment issue is addressed in our planning and environmental documents, and to coordinate with our Washington staff on any areas of uncertainty or controversy.

We are continuing to develop supplemental guidance to help ensure that the no-impairment policy is consistently applied in a reasonable manner. Another important safeguard in implementing this policy is the Secretary's Four Cs program—conservation through consultation, cooperation, and communication. I meet on a monthly basis with our Regional Directors to discuss ways that we can use the Secretary's Four Cs program to make more thoughtful policy decisions together with our affected communities. I believe that implementing the no-impairment policy under the guidance of the Secretary's Four Cs principles will help ensure that our actions comply with the law, protect park resources, and guarantee the American public appropriate opportunities to enjoy access to their parks.

Appropriate Use and Enjoyment

The word "appropriate" is key to the way we manage the national park system. As stated in the Management Policies, national parks belong to all Americans, and all Americans should feel welcome to experience the parks. While competing interests may disagree on their interpretation of "appropriate use," our mandate is to ensure public access and enjoyment of the parks. I strongly support this mandate. As park stewards we must be thoughtful in authorizing activities in the parks. Congress has entrusted to our care the most unique and special places in America. I

would like to offer some historical perspective about the types of “appropriate” recreational activities that have occurred in the National Parks through the years:

- In 1930, a nine-hole miniature golf course was laid out on the grounds of the Ahwahnee Hotel in Yosemite National Park. Today, 7 Federally-owned and approximately 41 private or municipal golf courses continue to operate in Park Service areas.
- In 1883, the first pack trips into Yellowstone National Park began. Dude ranching was introduced at the end of the 1890s and reached its peak by 1920s. Today, horse concession operations currently exist in a number of parks including Yellowstone, Great Smoky Mountains, Shenandoah, Rocky Mountain, Grand Teton, Glacier, Yosemite and Zion National Parks.
- As early as 1917, skiing occurred in Rocky Mountain National Park. In 1931, a major ski tournament held in the park was attended by 5,000 other spectators. During the 1964–65 season, 60,000 people visited the ski area. This ski area, along with those at Lassen Volcanic and Sequoia National Parks were closed within the past 20 years. The ski areas in Yosemite and Olympic National Parks remain open. Cross-country skiing and snowshoeing continue to be popular activities in many parks.

The 385 diverse units of the National Park System are special places with great variety. Thus, what activities are appropriate in one area may not necessarily be appropriate in others. Therefore, the term appropriate use and enjoyment is not necessarily restrictive. Moreover, we must recognize that the terms may also be dependent upon the cultural context in which they are applied—i.e. what was considered an appropriate use in the 1920s may not necessarily be viewed as an appropriate use today.

Visitors to the National Park System today continue to enjoy a wide range of recreational activities, where appropriate and as determined by legislation or a unit's General Management Plan. These activities include: biking, wildlife viewing, boating, canoeing, sailing, personal watercraft, cross-country skiing, down-hill skiing, fishing, golfing, hiking, horseback riding, mountain climbing, off-road vehicle use, orienteering, rock climbing, SCUBA diving, snowmobiling, and swimming.

Mr. Chairman, thank you for the opportunity to provide you with this background information. This concludes my prepared remarks, and I will be happy to answer any questions you or other committee members might have.

SECTION 1.4 OF THE NATIONAL PARK SERVICE MANAGEMENT POLICIES

Interpreting the Key Statutory Provisions of the 1916 NPS Organic Act

1.4 Park Management

1.4.1 The Laws Generally Governing Park Management

The most important statutory directive for the National Park Service is provided by interrelated provisions of the NPS Organic Act of 1916, and the NPS General Authorities Act of 1970, including amendments to the latter law enacted in 1978.

The key management-related provision of the Organic Act is:

[The National Park Service] shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations herein-after specified ... by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. (16 USC 1)

Congress supplemented and clarified these provisions through enactment of the General Authorities Act in 1970, and again through enactment of a 1978 amendment to that law (the “Redwood amendment,” contained in a bill expanding Redwood National Park, which added the last two sentences in the following provision). The key part of that act, as amended, is:

Congress declares that the national park system, which began with establishment of Yellowstone National Park in 1872, has since grown to include superlative natural, historic, and recreation areas in every major region of the United States, its territories and island possessions; that these areas, though distinct in character, are united through their inter-related purposes and resources into one national park system as cumulative expressions of a single national heritage; that, individually and collectively, these areas derive increased national dignity and recognition of their superlative environmental quality through their inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people of the United States; and that it is the purpose of this Act to include all such areas in the System and to clarify the authorities applicable to

the system. Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park System, as defined in section 1c of this title, shall be consistent with and founded in the purpose established by section 1 of this title [the Organic Act provision quoted above], to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress. (16 USC 1a-1)

This section 1.4 of Management Policies represents the agency's interpretation of these key statutory provisions.

1.4.2 "Impairment" and "Derogation": One Standard

Congress intended the language of the Redwood amendment to the General Authorities Act to reiterate the provisions of the Organic Act, not create a substantively different management standard. The House committee report described the Redwood amendment as a "declaration by Congress" that the promotion and regulation of the national park system is to be consistent with the Organic Act. The Senate committee report stated that under the Redwood amendment, "The Secretary has an absolute duty, which is not to be compromised, to fulfill the mandate of the 1916 Act to take whatever actions and seek whatever relief as will safeguard the units of the national park system." So, although the Organic Act and the General Authorities Act, as amended by the Redwood amendment, use different wording ("unimpaired" and "derogation") to describe what the National Park Service must avoid, they define a single standard for the management of the national park system—not two different standards. For simplicity, Management Policies uses "impairment," not both statutory phrases, to refer to that single standard.

1.4.3 The NPS Obligation to Conserve and Provide for Enjoyment of Park Resources and Values

The "fundamental purpose" of the national park system, established by the Organic Act and reaffirmed by the General Authorities Act, as amended, begins with a mandate to conserve park resources and values. This mandate is independent of the separate prohibition on impairment, and so applies all the time, with respect to all park resources and values, even when there is no risk that any park resources or values may be impaired. NPS managers must always seek ways to avoid, or to minimize to the greatest degree practicable, adverse impacts on park resources and values. However, the laws do give the Service the management discretion to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, so long as the impact does not constitute impairment of the affected resources and values.

The fundamental purpose of all parks also includes providing for the enjoyment of park resources and values by the people of the United States. The "enjoyment" that is contemplated by the statute is broad; it is the enjoyment of all the people of the United States, not just those who visit parks, and so includes enjoyment both by people who directly experience parks and by those who appreciate them from afar. It also includes deriving benefit (including scientific knowledge) and inspiration from parks, as well as other forms of enjoyment.

Congress, recognizing that the enjoyment by future generations of the national parks can be ensured only if the superb quality of park resources and values is left unimpaired, has provided that when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant. This is how courts have consistently interpreted the Organic Act, in decisions that variously describe it as making "resource protection the primary goal" or "resource protection the overarching concern," or as establishing a "primary mission of resource conservation," a "conservation mandate," "an overriding preservation mandate," "an overarching goal of resource protection," or "but a single purpose, namely, conservation."

1.4.4 The Prohibition on Impairment of Park Resources and Values

While Congress has given the Service the management discretion to allow certain impacts within parks, that discretion is limited by the statutory requirement (enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired, unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the National Park Service. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.

The impairment of park resources and values may not be allowed by the Service unless directly and specifically provided for by legislation or by the proclamation es-

tablishing the park. The relevant legislation or proclamation must provide explicitly (not by implication or inference) for the activity, in terms that keep the Service from having the authority to manage the activity so as to avoid the impairment.

1.4.5 What Constitutes Impairment of Park Resources and Values

The impairment that is prohibited by the Organic Act and the General Authorities Act is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. Whether an impact meets this definition depends on the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts.

An impact to any park resource or value may constitute an impairment. An impact would be more likely to constitute an impairment to the extent that it affects a resource or value whose conservation is:

- Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park;
- Key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park; or
- Identified as a goal in the park's general management plan or other relevant NPS planning documents.

An impact would be less likely to constitute an impairment to the extent that it is an unavoidable result, which cannot reasonably be further mitigated, of an action necessary to preserve or restore the integrity of park resources or values.

Impairment may occur from visitor activities; NPS activities in the course of managing a park; or activities undertaken by concessioners, contractors, and others operating in the park.

1.4.6 What Constitutes Park Resources and Values

The "park resources and values" that are subject to the no-impairment standard include:

- the park's scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals;
- opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing any of them;
- the park's role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system; and
- any additional attributes encompassed by the specific values and purposes for which it was established.

1.4.7 Decision-making Requirements to Avoid Impairments

Before approving a proposed action that could lead to an impairment of park resources and values, an NPS decision-maker must consider the impacts of the proposed action and determine, in writing, that the activity will not lead to an impairment of park resources and values. If there would be an impairment, the action may not be approved.

In making a determination of whether there would be an impairment, a National Park Service decision-maker must use his or her professional judgment. The decision-maker must consider any environmental assessments or environmental impact statements required by the National Environmental Policy Act of 1969 (NEPA); relevant scientific studies, and other sources of information; and public comments.

When an NPS decision-maker becomes aware that an ongoing activity might have led or might be leading to an impairment of park resources or values, he or she must investigate and determine if there is, or will be, an impairment. Whenever practicable, such an investigation and determination will be made as part of an appropriate park planning process undertaken for other purposes. If it determined that there is, or will be, such an impairment, the Director must take appropriate action, to the extent possible within the Service's authorities and available resources, to eliminate the impairment. The action must eliminate the impairment as soon as reasonably possible, taking into consideration the nature, duration, magnitude, and other characteristics of the impacts to park resources and values, as

well as the requirements of NEPA, the Administrative Procedure Act, and other applicable law.

Mr. RADANOVICH. As you know, those bells were the vote calls—
Ms. MAINELLA. Yes, sir.

Mr. RADANOVICH. and we have probably got another 5 minutes, at least, before we should head out. If it is OK with the Committee, shall we recess and return to this after the last vote. If members who are interested to give questions and have some dialog, please do your best to get back here right after the vote. Thank you.

We will be in recess until the votes are finished. Thanks.

[Recess.]

Mr. RADANOVICH. This hearing is back in session, and I think I will go ahead and start off with a few questions, Fran.

Ms. MAINELLA. Yes, sir.

Mr. RADANOVICH. If I can kind of go over my knowledge of the history of the development of these plans, it seems to me as they relate to the issue of impairment and the definition of impairment, it seems to have changed in this plan as a result of a lawsuit—I forget the date of the lawsuit, but it was 1998—

Ms. MAINELLA. Ninety-eight.

Mr. RADANOVICH. —SUWA v. National Park Service, Southern Utah Wilderness Association, I believe, and it raised the impairment standard as the predominant mission of the Park Service, tipping 82 years of balancing resources protection and visitor enjoyment, and it seems to kind of strike at the heart of this whole issue of the idea that the Park Service and the Organic Act was formed to achieve a balance between conservation and access or enjoyment of the resources.

Yet in a decision in 1998, in this court decision, at least the court seemed to prioritize one purpose above the other, giving the issue of the protection of the resources over the visitorship of this particular wilderness area, and it seems to me, and correct me if I am wrong, that that was the decision which led to the formulation of some of the Management Policies that we have seen adopted here today.

Now, it was my knowledge this thing in 1999 was thrown out of court and I think the court had remanded in appeal that that finding was not right and that the Organic Act was written to stress the fact that it is a balancing act that we are looking at. It is not one use over the other.

Can you kind of go through that for me, kind of lay it out a little bit?

Ms. MAINELLA. I will be glad to as best as I can. Again, I was not here during that time, as you know. My understanding through my briefings and my reading of materials is that, in all honesty, if you go back to reading the 1916 Organic Act, as I read it, it always has been existing that the enjoyment was always under the contingency of the fact that it had to be that the resources were still always protected, or go unimpaired.

So that was always like a modifying factor, so that has always existed, and being in public lands management as long as I have, we have always—my comment has always been, for those who have known me in Florida and others, is that there can be no outdoor

recreation without protection of the resource first, and if you are going to err, you will err on the side of the resource, and so we have always been in that position.

I think what happened in these court cases, as I have been briefed, and we do not have our solicitors with us here today—I apologize on that—the court, the District Court out of Utah actually found us in violation not of policy but truly of the Organic Act, and that was the first time in our history that we know of that we have actually been found guilty of that.

And then there was an appeal, and in the appeal, the decision was reversed, but it was remanded back to the District Court to look at it again, and through the explanations that I have been given it was because of the fact that we were not clear. We were working on policies and it did at that point, even though they had been working on policies in the National Park Service since 1994, it gave us an extra impetus to emphasize clarity in the impairment aspect so that it was not a court deciding what impairment was but actually done through professionals and park and recreation to help define that.

The only thing I have on the actual court review is that I have got here a quote that says, “The appeals court also wrote that we read the Act as permitting the National Park Service to balance the sometimes conflicting policies of resource conservation and visitor enjoyment in determining what activities should be permitted or prohibited. But the court added that the test for whether the National Park Service has performed its balancing properly is whether the resulting action leaves the resources unimpaired for the enjoyment of future generations.” That is what the appeals court said when it reversed but sent it back to the district level of court.

At this point, I do not know if I can go further in knowing more about that, and I would look to either Randy or Mike, if they have any follow-up, but again, I would have to pull my solicitors in and I could have them do some more write-up on it. But that is as much as I would be able to speak to, I think, in regard to what was taking place.

But I know that—again, as you look at it, you are always doing a balancing but your erring always has to be on the side of the resource. By law, as we were found guilty of in the original case, but again, it was reversed, was that we were actually violating the Organic Act when we were trying to actually allow some access into the back country area. We thought we were restricting it but permitting some access and we thought that we were not in violation of any Organic Act.

As we go through, I think we are still working on an environmental assessment in that area, and doing that, we would probably be looking at some kind of access back there again if the courts will allow us.

Mr. RADANOVICH. Right. Just for entering into the record, there is a decision, as you are well aware, that dealt with in, I like to say my park, Yosemite National Park, the park within my district, where the lawsuit resulted in a court decision which basically spoke to the issue of the Organic Act and I would like to read it

into the record. It kind of reinforces the issue of balancing as the approach.

Ms. MAINELLA. Right.

Mr. RADANOVICH. "The Organic Act commits the National Park Service to protection and furtherance of two fundamentally competing values, the preservation of natural and cultural resources and the facilitation of public use and enjoyment. These competing values of conservation and public use have been actively in conflict since before the establishment of the National Park Service and the Organic Act did not resolve the conflict in favor of one side or the other. Rather, the Organic Act acknowledges a conflict and, saying nothing about how to achieve resolution, grants deference to the National Park Service in balancing the competing and conflicting values." This was in the case of *Sierra Club v. Babbitt* that was, of course, recently issued.

Ms. MAINELLA. Right.

Mr. RADANOVICH. My concern is that if there is an err to one side or the other, in particular on the issue of impairment and the conservation of resources, not that I do not want to see them conserved, but once you go down that road, then it is very subjective as to whose interpretation of impairment is going to be used.

I could make the case that if you wanted to—in Yosemite, they will be developing a cultural center for Indians, the Native American community, in the park and they are going to disturb a couple blades of grass. Well, I could make the case that that would affect the impairment of the national park, and you could go to some real extremes of that.

Ms. MAINELLA. Right.

Mr. RADANOVICH. If you go down that road, I am very concerned that what you may end up with are plans that deny access to the parks.

Ms. MAINELLA. I think one of the things we are working on fairly aggressively right now and was in my comments, and they had actually started before I had come there, is working on trying to get some guidelines for our superintendents and for all of us to better understand the difference between impacts, which are allowable, and in fact, we do not encourage them, obviously, but impacts are allowable and they do not cross that line and become impairments until they are very severe and they deal with the major establishing legislation of the park or dealing with the key resources of that park or go against something that is a key goal established in the management plan that has been reviewed through the public review and that process.

Those are the things that, I think—we are trying to actually, since I have come on board, try to help give more consistency and these guidelines are going to be critical, as well as I do believe that the Director's Order—it is timely for me to come forward with a Director's Order on public participation and making sure it is clear that the public are invited into our parks.

I think there were many pieces of legislation—some issues that took place, not necessarily legislation, that came out simultaneously with the Management Policies, personal watercraft issues, snowmobile issues, and others that may have also confused this impact and impairment and other things, as well as just man-

agerial decisions. My guess is a lot of things that some of the members here of this Committee will encounter is that the appropriate use—what is an appropriate use in a park?

For example, I give the example of it is OK to go to the mall and have a boom box, for example, playing music out there. But to do that at the U.S.S. Arizona, that is a sacred, I mean, it is a quiet place. That is an inappropriate—there is where the same activity is OK one place but not in the other.

Mr. RADANOVICH. Thank you very much.

Mrs. Christensen?

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

I wanted to ask about any process that might take place from now on, because the development of this document has been more than 10 years in the making. There must be an interim process for altering or updating it, short of a complete revision, and if so, can you describe for us that process, and if you have used it, maybe an example of where you have used it already.

Ms. MAINELLA. What we would be looking at doing, again, it is an administrative—it is not a regulation. It is coming from the Department and it is evolving. In fact, if you look at some of the language on soundscapes and other things, that is still evolving. Mike Soukup is here and could even speak to that as we go forth.

So what we will be able to do is work with that. As we see where we need to further clarify, we will be able to do that through—we will make sure it is through a good public review. But also, I can do Director's Orders. You heard me speak about Director's Orders. For example, to further clarify what is the intent of, where it may be very general in a policy, be able to do a Director's Order that gives more clarity, and the importance is so that our folks in all—everyone knows exactly what we are looking at and we are able to establish much more consistency throughout the system. I hope that answers the question.

Mrs. CHRISTENSEN. It seems like there has been a lot written in the papers recently about the Park Service, monuments, et cetera, and this morning we had a meeting that looked at some public opinion polls. Whatever you feel about polls, they do give us an idea of where the people we serve stand on issues and these indicated that most Americans are really concerned about the protection of our open spaces, our parks, and want stronger laws, or really, mostly they want to see that the laws are strictly enforced, those that are on the books are strictly enforced.

I just wanted some assurance. Is that the position of the Park Service? They feel that they are not being.

Ms. MAINELLA. We hope that we are doing a fine job in enforcing what rules we have on the books. Obviously, again, education is a key element and we continue to—I will be emphasizing education of our employees at a greater level than probably we have ever done before and making sure, even if we are not law enforcement officers that are out there, because enforcement can happen without being law enforcement officers, make sure we are following through on all the guidance that is set forth.

Randy, I do not know if you have any follow-up. Randy Jones, who is now my deputy, has been a superintendent most recently at Rocky Mountain National Park—

Mrs. CHRISTENSEN. And before you answer, there seems to be the impression based on these surveys that as many as 80 percent of the respondents feeling that the enforcement of the laws or the status of the laws was just not strong enough.

Ms. MAINELLA. We had not seen that survey, I know myself, because I know we have a 95 percent satisfaction level on the surveys we have done on our visitations in parks, but I am not familiar. Did you feel that you had good law enforcement?

Mr. JONES. I have certainly not experienced any of that kind of expression in the years that I was at Rocky Mountain National Park, for example. I think a lot of the issues we deal with, especially the whole public use versus resource protection, is an issue of competing values and is an issue of balancing that different segments of the public come and emphasize one position versus another.

On that issue, I have always felt, though, that the best way to protect parks for the long haul, looking to future generations, is that the parks need to remain relevant to society, and the best way of doing that is to have the parks open and available for public use and have the public have a great time in the parks, and I think the visitation shows that that is happening.

Mrs. CHRISTENSEN. I think it probably goes back to the impairment issue and the always erring on the side of conservation. I think that is probably what some of the concern is.

I have probably one other question in this round and it goes back to something Mr. Souder said. The Organic Act establishing the Park Service has said these areas, in describing the parks, though distinct in character, are united through the interrelated purposes and resources into one National Park System as cumulative expressions of a single national heritage.

Now, to me, that sounds as though—it says it is one park system. How I interpret that is that there is one management, or a set of concrete principles that govern the management of all parks, regardless of where they are, what kind of parks they are, and I wanted to know if that was the interpretation of the Park Service.

Ms. MAINELLA. We do view ourselves as one National Park System, and through the policies, what we are hoping, I think, as they were being worked on was to help make us more consistent across the system, but to do so still on a case-by-case basis in the sense that we have core values, core questions that are asked through, when you are evaluating, is this an appropriate use? Is this impairment? There are certain questions that a superintendent will ask no matter whether they are at a recreation area or whether they are in a preserve or different aspects.

Of course, the enabling legislation, though, may have established certain unique rights, for example, Big Cypress having hunting allowed in the park in that particular area, or some others that allow certain establishments of certain activities that may not be consistent with the rest of the system.

Mrs. CHRISTENSEN. So there are parks that have hunting in the parks?

Ms. MAINELLA. There are. They are not under—they are under the generic name of parks, and I think that goes back to the confu-

sion that sometimes exists. In Big Cypress, of course, it is labeled as a preserve. Randy, you may want to follow up.

Mr. JONES. The National Park System certainly has evolved since 1872 when Yellowstone was first established. Up until really the 1950's and 1960's, most of the national parks were the big Western areas, the Grand Canyons, the Yellowstone, or the great historic areas like the Statue of Liberty or Gettysburg.

But in the 1960's and 1970's continuing through today, there have been the whole addition of seashores, lakeshores, recreation areas, urban recreation areas. The national preserve concept was actually developed by this Committee in 1974, which was a recognition that there are some places in the National Park System where hunting, in fact, is appropriate and is allowed in the statutes establishing those areas. Since then, we now have preserves all over the country, and most recently, of course, with the designation of heritage areas that we are involved in that are a totally different concept.

So one of the challenges we have and one of the education challenges we have with our employees that move around the Service is we have to have guiding, overreaching principles for the National Park System, but, in fact, one size does not fit all because the statutes establishing the different areas are different and what is appropriate at Lake Mead may not be appropriate at a Yellowstone or a Grand Canyon.

Mrs. CHRISTENSEN. That sounds like that invites a lot of confusion. My time is up. I will come back on the next round.

Mr. RADANOVICH. Mr. Souder?

Mr. SOUDER. Thank you. I would like to continue on this vein.

My sense, and I have just skimmed this report, is that this does not pick up those inconsistencies, and what I am wondering is why a policy document would not say, this is the minimal standard for everybody, and then it is almost a gradation of uses up toward wilderness, because that is, in fact, how you are functioning.

Ms. MAINELLA. Right.

Mr. SOUDER. Now, some of it is by law, some of it is by practicality. Let me illustrate with a question. One of our big debates here is should there be no net degradation of natural resources, almost like our wetland standard. That has been kind of the case in most of the big Western parks on lodging, on campsites, on other questions like that. Is that something that you kind of view as a policy, no net degradation?

Ms. MAINELLA. I guess what I think is consistent, and Mike may be able to help me in a minute, is that, of course, there is no—in none of our parks, be it recreation areas or otherwise, should there be any impairment taking place. What does happen, though, and the determination gets a little more—this is where a recreation area is allowed to have by its establishment—its legislation usually allows more recreation activities that are acceptable without crossing into where it might be even viewed as an impact.

I think the past years, they may have looked, at, well, should we do by classifications different levels of activities? My own experience beyond even the National Park System is that we have always tried to set certain questions, which is what has come out in the policies, to look at every area, but always going back again to the

enabling legislation and the descriptions. Many of us, when I was in State parks, looked at it as classifications of unit to decide that.

Mike, I do not know if you have a follow-up on that.

Mr. SOUKUP. Yes. I just might add to that, in fact.

Ms. MAINELLA. This is Mike Soukup.

Mr. SOUKUP. The General Authorities Act of 1970 said that we ought to have essentially what you suggest, and that is that baseline minimal standards for all the units, no matter what their designation might be, while observing the intent of the legislation, which is often quite detailed about what should go on in that park, what should be grandfathered in, and how that park should be managed for, in some cases, increased recreational uses or certain kinds of special things that historically occurred there.

So with that policy document that you have there, in my mind, that is kind of the basic standard by which all units will be managed, taking into account what is in the enabling legislation in terms of special things that might happen there. Let me go through some specific examples.

What you are basically suggesting is that while there might—you are using the term impairment as opposed to degradation—

Ms. MAINELLA. Supposedly, they are the same.

Mr. SOUKUP. —that when the rubber meets the road in these different conflicts, because there is, I would argue, it is day-to-day functioning that way, but because we kind of talk about what was grandfathered in, the bias moves toward restricting visitation or activities-type things as opposed to resource protection. It is not necessarily bad as long as you know exactly what you are doing, and I would argue right now it is a random pattern, which is what is partly causing the conflict. Let me give you some examples.

We just passed Fort Clatsop legislation earlier this week. That will be a net degradation of a natural resource because right now it is a forest and we are going to put a trail through. That is the point of the park, is to have a trail that goes from Fort Clatsop to the ocean. On the other hand, as opposed to having it as a housing development, that is not a degradation, so depending even on how you define that.

At Elkhorn Ranch, trying to add to Theodore Roosevelt, there, it would be a preserve. That would be an argument that it is grandfathered in, conceivably, but right now, some of that area is not used that way but it was a historic use a long time ago.

At Rocky Mountain, we visited a ranch that you are working to preserve. At each of these parks, what is the battle between cultural resources and natural resources? Do you keep every ranch there at Grand Teton, every ranch at Rocky Mountain?

One of the fundamental things here is that we have two different, even in the historic preservation versus the natural preservation, yet alone the visitor utilization question comes into conflict, as it did at Gettysburg.

Another fundamental question is, I would argue that some of the parks are designed by nature to be conservation oriented. In other words, the very thing that Mather first put in, the dilemma that everybody is wrestling with every since, visitation and preservation. Everglades predominately is a natural resource—

Ms. MAINELLA. Right, exactly.

Mr. SOUKUP. —with some visitation, whereas Lake Mead is a dam and it did not even have either as its first goal, and now it is predominately oriented toward visitation with some use of that.

Even lakeshores differ. When we cut the Indiana Dunes out of Gary, Indiana, and Chicago, it is different than the lakeshore at Cape Hatteras, which is different than the lakeshore at Sleeping Bear in Michigan, where you just had a few people.

So what to me seems, just as a business guy, that there is a hierarchy here that says the more pristine the wilderness, the more you move it toward the wilderness standard. We have a hierarchy. Golden Gate is one of the more controversial because there, we have added multiple types of units and there needs to be some recognition that if part of a recreation area, which I would argue the primary goal of a recreation area has recreation in it, that if it is going to have to move more toward the park status, then it ought to be filed toward park. And if a park is going more toward wilderness status, we ought to recognize that part of that is going toward wilderness. Informally, you are doing this, but part of the conflicts that we are having is that it is informal rather than in a guided document.

And then we have the whole question of, obviously, a park is different than a forest, and what we are continuing to see on BLM and forest land is visitor services, when possible, are located at the access to a wilderness park, if possible.

But there needs to be kind of a holistic, more specified gradation thing, because what I do not sense out of here is the conflicts we are having on snowmobiles, personal watercraft, horseback riding, cultural versus historic preservation. You are trying to reach that goal, but part of it, by having it say it is a park, I would argue that you have gone beyond the minimal standards in the document and argued that the reason you have gone beyond the minimal standard is they were grandfathered in when, in fact, some of these things are continuing questions.

For example, if I can throw one more concept out and then I will be quiet, that part of what there is a general feeling right now is that the number of campsites, the amount of lodging, the number of trails are going to be permanently frozen at, say, the year 2000 and that our lodging, trails, and other facilities, if it is not a wilderness designated part of a park, is it meant to be a percent of visitation or is it meant to be a capped amount?

And that is a fundamental resolution that has not really come forth as to how we are going to use these parks, because clearly, demand for the parks is going to increase over time. Does that mean—that was my no net degradation. It is a fundamental debate that each superintendent is floundering around with and whoever has the biggest pressure group at the time or whoever is screaming loud, that whole thing on the community support, if the bedroom community gets mad enough, if there are enough powerful visitors to change something on one side or the other or one administration has a change, but I think that this document has to kind of grasp some of these and put in, how do recreation areas evolve, or do they, because we have mixed recreation.

What is the Boston Island Park area? There, you improve it if you put in a picnic grounds as opposed to Logan Airport.

Ms. MAINELLA. Right. Exactly.

Mr. SOUKUP. I am not proposing getting rid of Logan Airport.

[Laughter.]

Ms. MAINELLA. I think, again, I appreciate your comments and I think those are something that, again, I keep going back to. I think these policies, as it has been depicted to me and as I read them, we are trying to start to make a method of some more consistency in decisionmaking and to be able to find questions more definitively to be asking and looking at so you are not doing what you are indicating with the different pressure groups or whatever.

Also, hopefully, the management plan process is also an important part of trying to determine how we move forward with a particular park, and again, it does encourage public participation because I do believe that that is something that is important. But it also does so in a way, again, trying to reiterate the issues that come back to making sure things are not impaired, but also to make sure that we still have environmentally friendly access that is appropriate and make sure people know that they are welcomed.

I really would appreciate maybe getting a chance to visit with you at another time to get more thoughts on some of this, because as, again, I see some evolving issues that are going to come forth as we—again, these have only been in place—this was only printed in March of 2001, so a lot of folks, even though it was on the Internet probably a few months before, are really just going and working with it. It was still so new. I think that we are going to need to let ourselves evolve, train employees as we go forth, but also have them encourage us, as you are, to think about some of the challenges that lay before us that we may not have yet addressed.

Mr. SOUDER. Thank you.

Ms. MAINELLA. Thank you.

Mr. RADANOVICH. Thank you.

Director Mainella, I know that on the issue of the plan as it addresses the distinction between impact and impairment, is it safe to say that it is left solely to the discretion of that particular park superintendent to determine that, or—

Ms. MAINELLA. They are to make the recommendation to us and then the regional director has to sign off if it is an impairment. Also, what we have found, because most impairments involve a NEPA process, it means it comes all the way usually to our Washington office to oversee that, as well, so there is more involvement.

But one of the things I think I mentioned in my comments is that I am going to be asking for more record keeping so that I have a better handle, because I think you probably can list some places and areas that I am not yet familiar with that are having some issues that may either be appropriate use discussions or dealing with impact or maybe impairment, but to have a better understanding yet of what is going on.

Again, I apologize. I am excited about being in this position, but having only been here for probably just about—I am in my eighth month now, I would want to continue to monitor this some more and have a little more data for you as we go through, because I do not think we still have collected up all that we could to better help us understand some of the scenarios that are out there that we need to be looking at.

Mr. RADANOVICH. Director, you had mentioned during the course of this thing, too, the possibility of reviewing the documents, taking a second look. Can you give me an idea of what is the intention, I think, from here forward, especially with the idea that a lot of this was based on a Canyonlands decision that was reversed. Would we consider this to be perhaps the intent to provide substantive review of the policies that would lead to rewrite, or give me an idea of the level of review that you intend to do.

Ms. MAINELLA. What I would like to do, I would rather not be rewriting the policies at this point. I would rather continue to monitor them and let them continue to evolve. There are going to be places that we are going to want to, and I would use the word tweak, I guess, or modify as we go along because we are going to be learning some things as we move on this. But I think that, again, I would ask your support to allow me to have some time to continue to monitor, talk about the Director's Order, to talk about public participation.

Let us also get back to you from the court—based on your opening comments, to get a better understanding of the court case and making sure with our solicitors, I think you mentioned about whether we need—should a briefing be—we talked maybe a little bit about whether briefing changes or anything like that should take place, or maybe some thoughts on that. We just need to make sure that we have had enough time to look at these, and I would like to work, again, through clarifying maybe what is in the policies rather than looking at a rewrite, if I can do so, at this time.

Mr. RADANOVICH. Right. I am aware that on this particular lawsuit that we were talking about that was remanded back to the court, that the court is still going to be making a decision. I guess I have a bit of a concern if the court uses these documents to justify any type of a decision, it may influence the decision incorrectly. Are we looking at the possibility of a suspension of these documents in the meantime to protect how they might be interpreted in cases that may come down between now and when these policies might be clarified or change?

Ms. MAINELLA. The only thing that I would—I really would not recommend at this point to do a suspension of these documents. What I would suggest is that we go back and talk with our solicitors. I have not seen even the brief that they sent back, exactly what that indicated as far as the courts. We can ask our—because the Department of Justice is also involved, obviously, in the court case—to give you a further update and to make sure that, again, I would like to continue to move forward on this.

The brief itself may be something that can be looked at. I do not know. But that is something that I would rather keep moving forward with these policies, if we can, for at least a period of time, to be able to review them and monitor them, but ask that our solicitors and the Department of Justice—I will go back and ask them to give us a further update as far as this court case is concerned.

Mr. RADANOVICH. OK. I am wondering if we cannot do that in a written way that can express—I am not sure how to do it, but my concern is how a court might use a document that has been adopted already in determining their decision, whereas if it is going

to be tweaked or changed or clarified in a manner not consistent with the document now, I would hate to see that court ruling on it.

Ms. MAINELLA. Right.

Mr. RADANOVICH. Maybe I should ask the question of you and you get back to me on if there is going to be a substantive change to the document, or the possibility that it is possible that that could happen, then if we can get it down in a written correspondence between you and I, I think that that might help on any pending court issue.

Ms. MAINELLA. Right. I think again, though, I do not know whether these would change in their—I mean, I guess the impairment aspect is really trying to define itself as, again, the fact that we should not be impairing our resources, and whether that interpretation is clear enough or whether that is giving any mis-signals to the courts, that is what I think I would like to take back and talk to the solicitors about and then confer with you.

Mr. RADANOVICH. OK. To your knowledge, has the Park Service, if there is a balancing act between conservation and visitorship, or however you want to say this thing—

Ms. MAINELLA. Right.

Mr. RADANOVICH. —have they ever erred on the side of visitorship? You are talking about a balancing act. I am sure there are times where—

Ms. MAINELLA. I am sure that—I do not know the history, but I am sure we would find examples where we may have erred on the side of the recreation but may have come back and decided again that we needed to come back. The erring on the side of the resource, that is the permanent aspect that is—and again, even going outside National Park Service, if you talk to public land managers, the resource, the cultural and natural resources, what is not ever replaceable, we want to invite the public to an environmentally friendly access, but we do not want to do it at the cost of permanent loss to our resource on a level of impairment.

Mr. RADANOVICH. Which I would not want to see—

Ms. MAINELLA. Right. I do not think you would, either.

Mr. RADANOVICH. —a resource impaired in any way. But my concern is the error then leads to lawsuits by special interest groups who would rather have nobody in the parks and blah, blah, blah. That is the way the agenda goes, and again, that is the big fear that I have with access to the national parks.

Mrs. Christensen?

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

Just to follow up on that, I have at least six cases here. I do not know that this exhausts all of the cases that would go back to the issue of erring on the side of conservation, but all of these, I am informed, do that and support the balancing in favor of preservation over development. This may not be all of them.

I wanted to also go back to the different standards and gradations, because it is my information that back in 1978, Congress, seeing the problem created around different standards and gradations of parks around the country, legislated that there should be one standard for all parks and that except for very superficial differences in management, that it is only when Congress specifies

that there should be a different management standard for a park that that should occur. That is correct?

Ms. MAINELLA. That is the way I understand it, for the most part, yes.

Mrs. CHRISTENSEN. OK. The Congress does have to specify. Otherwise, they are all managed basically the same except for some very, very superficial differences?

Ms. MAINELLA. Based on your resources, we can do hiking where maybe someplace else you cannot.

Mrs. CHRISTENSEN. I wanted to take the opportunity to just mention some issues that relate specifically to my district briefly. One is our fee demo program.

Ms. MAINELLA. Yes, ma'am.

Mrs. CHRISTENSEN. We are already halfway through the year. I am not sure I am going to get a chance to have you here again before we complete the year. We have a fee demo program. They are called user fees, and that is really termed admission fees. But given the fact that two-thirds of the Island of St. John is a national park and that there is a conflict in the legislation which established the park which prohibited the charging of fees for entrance to admission to the park to Virgin Islands residents.

I am not asking for interpretation right now. I am just asking for your commitment to work with us to see if we can find a way to, since this is just a demo program, since the legislation that transferred this land to the parks did so state, to work out some arrangement that could be more palatable to the people of St. John and the Virgin Islands, especially since there are so many other issues that just cannot be changed because Park Service management has to be uniform throughout the parks.

Ms. MAINELLA. I will be glad to work with you.

Mrs. CHRISTENSEN. It would be a good gesture of good will.

And the other one, again, something else that I would just like to get some commitment on behalf of the people of the Virgin Islands, particularly St. Croix and St. John again, that as the monuments issue is determined, we would anticipate that GAO will be answering us shortly, that we will be able to have—that the Park Service will conduct a public education campaign, mainly to help us inform my constituents as to the benefits of the monument, which they are not too sure about right now, and that there would be an appropriate period for decisionmaking, as well.

Ms. MAINELLA. Yes, ma'am.

Mrs. CHRISTENSEN. The other thing that we would like to consider and discuss further is whether, if there is economic injury, that there would be some kind of compensation, but particularly, I want the public education period and the—

Ms. MAINELLA. I know the public education and—

Mrs. CHRISTENSEN. —and the management decisions—

Ms. MAINELLA. Right, the management—

Mrs. CHRISTENSEN. —the consultation.

Ms. MAINELLA. That is correct.

Mrs. CHRISTENSEN. We appreciate that.

Ms. MAINELLA. Thank you.

Mrs. CHRISTENSEN. I do not know that I have another question right now.

Mr. RADANOVICH. Thank you, Mrs. Christensen.

I have got one final question, Director. On the new policies that have been submitted to the Committee—

Ms. MAINELLA. Yes?

Mr. RADANOVICH. —do you consider these to be interpretative rules?

Ms. MAINELLA. As I look at the policies, we are going to be helping—in other words, they give us the general overview. We are now going to be looking at guidelines. I think I mentioned we have work groups working on guidelines to be more succinct in interpreting those particular policies. So I guess they are much more generalistic, but they actually, hopefully, will help keep us so that they have a little more substance to them than what will mean where we were found on that first court case, to find that we were not even addressing the Organic Act in a proper way.

So we are trying to be more consistent, try to give some general guidelines to our staff, but then we will need to go into more detail through guidelines and others to be—and I think that is what will really play in, where we can work with you on some of those and take a look at how we proceed on that.

Mr. RADANOVICH. Terrific. Do we have an idea of when we might see you again to discuss these?

Ms. MAINELLA. Well, I am always available to you, but I know the Committee has been working on some of these guidelines for a while and I think they are trying to pick up the pace. We have asked that the Committee pick up the pace and try to do something in the next number of months, so I can give you a more realistic timeframe very shortly.

Mr. RADANOVICH. Very good.

Ms. MAINELLA. But we will be working on that.

Mr. RADANOVICH. Very good. I am asking unanimous consent, if there is no objection, that any questions that Committee members might have to submit to the Director, that they be allowed to do so in written form. That would be wonderful.

Ms. MAINELLA. Thank you.

Mr. RADANOVICH. Mr. Jones, Mr. Soukup, thank you for your great assistance, and Director Mainella, it has been wonderful to have you before our Committee.

Ms. MAINELLA. Thank you. Thank you, sir.

Mr. RADANOVICH. I certainly look forward to working with you on these and many, many more issues.

Ms. MAINELLA. Thank you, sir. I do appreciate it. Thank you.

Mr. RADANOVICH. Thank you for being here.

[Whereupon, at 3:50 p.m., the Subcommittee was adjourned.]

The following information was submitted for the record:

- Association of National Park Rangers, Statement submitted for the record
- Gallegly, Hon. Elton, a Representative in Congress from the State of California, Statement submitted for the record
- Kiernan, Thomas C., President, National Parks Conservation Association, Statement submitted for the record

[The statement submitted for the record by the Association of National Park Rangers follows:]

Statement of Ken Mabery, President, Association of National Park Rangers

The Association of National Park Rangers (ANPR), an organization of 1,100 employees of the National Park Service (NPS) appreciates the opportunity to submit written testimony concerning the National Park Service's Management Policies. We welcome this opportunity to share our views on how they are applied to daily management of the National Park System.

National Parks are spread out across the nation and its territories. Park environments and management situations vary from extremes of temperatures, isolation and elevation. Urban sites, such as those in New York City receive thousands of visitors every week, while small isolated parks such as those in North Dakota may go days without seeing any visitor during the winter. This distribution and variety provides many challenges to managing the National Parks with consistency. Visitors expect the parks to be managed to the highest standard of consistent and professional care. Significant responsibility is placed on park superintendents to resolve the issues. Superintendents and others consult Management Policies as they try to ascertain their best course of action. Most of the policies offer necessary flexibility to deal with the variety of local circumstances, resources and resource conditions, regional demographics, and other special circumstances, while informing staff about the legal constraints. Where they do not offer flexibility, it is usually because there is a law or some other higher-level authority that limits the policy choices.

Fundamental concepts and directions contained in the 2000 edition of Management Policies have remained unchanged since 1918 when Secretary of the Interior Franklin Lane issued the first written policies. "The Lane Letter," as it is known in the NPS, stated that "Every activity of the Service is subordinate to the duties imposed upon it to faithfully preserve the parks for posterity in essentially their natural state." His statement was based on the August 25, 1916, "National Park Service Organic Act." While the "Lane Letter" totaled no more than a few pages, more elaborate policies are necessitated today because the challenges of managing the parks have become much more complicated, as have the laws which govern management of the parks. Because of this complexity, most NPS employees appreciate having at their fingertips a set of policies that help them perform their jobs better. When we do our jobs better, we serve the parks and the American people better.

We have heard some concern that the 2000 edition of Management Policies is a radical departure from the 1988 edition. But in reading the two documents closely, we find that this is not the case. It is true that there are more details in the new edition and more guidance and explanation, but rangers and other NPS employees find that to be helpful. It is helpful because it makes it easier to understand the many factors we must consider in resolving problems, and because it allows us to approach problems with more consistency across the National Park system. As field employees, we find the following expansions to be quite helpful:

- Detailed explanation of our responsibility to manage parks unimpaired for the enjoyment of future generations. (More on this later.)
- Discussions of value analysis, sustainability, environmental leadership, partnerships, external threats to the parks, and natural sound, light, and odors.
- Recognition of the need for scientific management of park resources including social sciences.
- Guidance on implementing new laws, such as GPRA, NAGPRA, and the National Park Omnibus Management Act of 1998.
- Better definition of consultation responsibilities with Tribal Governments.
- Better guidance on the educational role of national parks, wilderness management, and on facility planning and design.
- Improved planning processes.

One issue of particular interest to employees of the NPS is the way the new Management Policies interprets the Organic Act's no-impairment clause found in Section 1.4 of the policies. This clause truly distinguishes National Park management from management of all other public lands. The history and traditions of the Service, and indeed, of every employee, is tied to providing for the preservation and perpetuation of park resources in such manner as will leave them unimpaired for future generations. Numerous articles discussing and debating this issue have appeared in ANPR's Journal, Ranger Magazine.

In the 1978 amendments to the General Authorities Act, and in the National Park Service Concessions Management Improvement Act of 1998, Congress reasserted its intent that the Service manage parks in ways that will leave them unimpaired for the enjoyment of future generations. The courts are also holding the NPS accountable. In the case, *Southern Utah Wilderness Alliance v. Dabney, et al.*, aspects of Canyonlands National Park's proposed Backcountry Management Plan were

challenged as being in violation of the no-impairment clause. During the appeal, the Service took the necessary step of defining its interpretation of "impairment." In its simplest form, the Service's interpretation recognizes that we cannot ensure enjoyment by future generations unless we first make sure that the current quality of park resources is sustained. This seems eminently reasonable and logical. In retrospect, it seems amazing that it took the Service 85 years to do this.

Despite the legal mandates and court rulings, some NPS managers have interpreted the Organic Act to allow them to impair park resources if it will serve the interests of public use and enjoyment. In order to implement the requirements of law more consistently, the 2000 Management Policies provides the clearest interpretation and guidance yet of the non-impairment clause. As the employee members of ANPR read and interpret this clause, based on the new guidance found in Section 1.4, the Service is to conserve in an unimpaired condition all the resources and values in the parks for the enjoyment of those who are here today, and those who will follow in future generations. How the question of impairment must be factored into the decision is explained as clearly as possible given the scope and breath of the System's units and resources. We realize that Section 1.4 does not provide a precise distinction between what is, and what is not, an impairment. That is as it should be, again given the multiplicity of conditions from Alaska to the Everglades and from the Pacific Islands to downtown New York City. The policies do provide an outline of the conditions where an impact would be more likely to constitute impairment.

To the extent that an impact affects a resource or value whose conservation is: necessary to the specific purposes for which the park was established; key to the natural or cultural integrity of the park or to opportunities for enjoyment; or identified as a key component in an approved park plan, that impact is more likely to constitute an impairment. Evaluation of this potential impairment then becomes part of the public participation process routinely performed under NEPA.

We are distressed to hear beliefs that Park Superintendents intend to use the non-impairment policy as a basis for closing parks to development and for discouraging public entry into the parks. We do not believe that Park Superintendents have any wish or intent to do that. It is true that park uses which might cause impairment must be strictly controlled and sometimes even prohibited in order to meet the Organic Act's mandate. But it is clear from reading Management Policies that avoiding impairment does not mean that all development and use of the parks must come to an end. Impairment is something that occurs only when the very integrity of a park would be compromised. Projects or activities that impact a park can still take place, as long as their impacts are not so damaging that they violate the Organic Act. It's been more than a year and a half since the non-impairment policy was first adopted in Director's Order 55, and park management has proceeded quite normally. Avoiding impairment means that park managers must be careful about what they do. There is nothing really new about that. Congress has told us that inclusion in the National Park system is reserved for those places that are most important to our nation's heritage. It is common sense, then, that the highest standard of care should apply to these very special places.

One of the decisions field managers must make regularly pertains to what kinds of park uses are appropriate. When Congress has spoken to this issue in a park's enabling legislation, the decisions are not usually difficult. But when the legislative intent is not known, managers sometimes find themselves in a quandary. A highlight of the current Management Policies for field managers are definitions in Chapter 8 of activities that the National Park Service will encourage. They include those that:

- Are inspirational, educational, healthful, and otherwise appropriate to the park environment;
- Will foster a continuing appreciation for park resources and values; and
- Will promote enjoyment through association and interaction with, park resources.

In addition, managers can allow other activities, provided they:

- Are appropriate to the reason the park was established; and
- Can be sustained without impairing park resources or values.

Finally, managers making decisions are given direction on prohibited activities, which include those that:

- Would impair park resources or values;
- Create an unsafe or unhealthful environment for other visitors or employees;
- Are contrary to the purposes for which the park was established; or
- Unreasonably interfere with:

* the atmosphere of peace, tranquility, and natural quiet maintained in wilderness, natural, historic, or commemorative locations within a park;

- * NPS interpretive, visitor service, administrative, or other activities;
- * NPS concessioner or contractor operations or services; or
- * other existing, appropriate park uses.

It is important to ANPR's membership that something so important to our lives should be embraced by everyone who truly cares about the parks. As employees of the National Park Service, the members of ANPR appreciate the strong sense of direction we have received from Congress that enjoyment of parks today must not be at the expense of future generations. The ANPR believes that the new edition of Management Policies is faithful to, and consistent with, that direction. We must be ever vigilant to manage the unique and splendid resources of the nation's historic icons, the places of scenic grandeur, and the scientific values not yet realized for the benefit of all of the people in all of the tomorrows yet to come.

Mr. Chairman, thank you for the opportunity to provide you with this background information.

[The statement submitted for the record by Mr. Gallegly follows:]

**Statement of The Honorable Elton Gallegly, a Representative in Congress
from the State of California**

Mr. Chairman, thank you for holding this important hearing. The 2001 National Park Service Management Policies Statement is the handbook the National Park Service uses to guide the management of America's parks. It is critical that this handbook reflect the laws and intentions of Congress, and the best interests of the public. Anything less will only provoke future conflict between the public and the Park Service.

Enjoyment of our national parks is one of two guiding principles set forth in the 1916 Organic Act that created the National Park Service. Unfortunately, the 2001 management policies virtually ignore that goal, placing a disproportionate emphasis on restricting public access. Consequently, these rules are used as a sledgehammer to drive the public out of their own parks. The most recent example of this trend has been attempts to ban personal watercraft and snowmobiles in most parks.

Mr. Chairman, I believe the Park Service should not be as concerned about restricting public access, but should instead give proper attention to the mounting maintenance backlog that is affecting recreational opportunities within our parks. Again, I thank the Chairman.

[The statement submitted for the record by Mr. Kiernan follows:]

**Statement of Thomas C. Kiernan, President,
National Parks Conservation Association**

The National Parks Conservation Association (NPCA) appreciates this opportunity to submit written testimony regarding the National Park Service's 2001 Management Policies. NPCA is America's only private, nonprofit advocacy organization dedicated solely to protecting, preserving, and enhancing the national park system. NPCA was founded in 1919 and today has approximately 400,000 members. For over eighty years, NPCA has been dedicated to ensuring the protection and appropriate management of America's natural, cultural, and historic legacy—a legacy that is contained within the national park system.

The National Park Service (NPS or the Service) is unique among federal land management agencies. The lands, wildlife, plants, artifacts, structures, processes, and values protected and managed by the Service all belong to an elite and internationally renowned system of preserves. Each unit within the national park system has been set aside because Congress has determined that it contains at least one "superlative" example of a "nationally significant" natural, cultural, historic, or recreational resource.

When creating the Service in 1916, Congress directed the agency to, "promote and regulate the use of the [parks]...by such means and measures as to conform to the **fundamental purpose** of the said parks, monuments, and reservations, which purpose is **to conserve the scenery and the natural and historic objects and the wild life therein** and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

16 U.S.C. 1 (emphasis added).

In the amendments to the Organic Act, Congress stated that park management "shall be conducted in light of the high public value and integrity of the National

Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established...” And further that the national park system is to be “preserved and managed for the benefit and inspiration of all the people of the United States.” 16 USC 1a–1

These directives found in the 1916 Organic Act and the 1970 and 1978 amendments thereto, impose mandatory obligations on the Service to prevent impairment of park resources and values and, consistent with that requirement, to provide for enjoyment of those resources by park visitors. They require park managers to exercise informed and careful judgments to protect all park resources to the greatest extent possible, to minimize adverse impacts, and to avoid any action that may cause impairment of park resources. Providing a quality visitor experience is contingent upon having first ensured the full and uncompromised protection of park resources.

Given the significant and unique mandate Congress has given to the National Park Service, it is natural, indeed it is necessary, that the agency have a clear set of policies and principles to guide its management decisions as it works to fulfill its critical mission. It is essential that the Service have a single, instructive document that can be used by each of the agency’s managers. Congress has stated that all park units, “though distinct in character, are united through their inter-related purposes and resources into one national park system as cumulative expressions of a single national heritage.” And further that “the promotion and regulation of the various areas of the National Park System” shall be consistent with and founded in the purpose established by the [Organic Act] to the common benefit of all the people of the United States.” 16 USC 1a–1

The Service’s 2001 Management Policies (Policies) serve the vital role of providing each park manager with the information necessary to make most policy-based park management decisions. While not a radical departure from the 1988 guidance, the 2001 Management Policies continue an important evolution in park management principles and practices. The Policies contain new guidance that is based on laws and regulations that have been enacted since the previous edition as well as more detailed guidance based on the agency’s 85 year old Organic Act.

Of most significance is the explicit statement by the agency regarding the primacy of park resource protection:

“While Congress has given the Service the management discretion to allow certain impacts within parks, that discretion is limited by the statutory requirement (enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired, unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the National Park Service. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.”

National Park Service 2001 Management Policies § 1.4.4

At times over the course of its history, the Service has struggled with making management decisions in light of the agency’s mandate both to preserve park resources and to provide for their enjoyment. On numerous occasions, agency confusion regarding its mandate has led to management decisions in different parks or at different times that appear contradictory. The Service’s congressional mandate, however, does not burden the agency with the impossible task of managing the parks while attempting to balance two co-equal interests: resource protection and visitor enjoyment.

The agency’s formal recognition that it is impossible to carry out its mandate to provide for the enjoyment of park resources until it has first ensured their protection is one of the most significant steps forward in the history of park policy. To weaken or eliminate this section of the management policies would not only set the Service back several decades, it would be contrary to Congress’ clear intent regarding the management of our national parks.

NPCA is aware that some have expressed concern regarding the impact of the new Policies on the public’s ability to visit the parks and enjoy park resources. Over the past year and a half, since the publication first of Director’s Order 55 and subsequently the full 2001 Management Policies, the Service has not taken any steps that would unnecessarily restrict opportunities to visit the parks. The 2001 Management Policies do not impose any limitations beyond those that exist within the Organic Act itself.

As discussed earlier, national parks are unique among public lands. Each unit has been set aside to preserve and promote the enjoyment of one or more specific resources. Their distinctive place among federal lands dictates that not every form of access or every type of activity will be appropriate within the parks. Activities and developments that would impair park resources or adversely impact the ability of

visitors to enjoy and be “inspired” by these special places have always been prohibited by the Organic Act.

Congress’ clear direction that the parks be open and accessible for visitor enjoyment signifies that not all activities, uses, or developments that have an impact on park resources rise to the level of impairment. The Act surely does not prohibit all activities or developments within parks—even those that are found to have an adverse impact on park resources are permissible if the park manager has sought to avoid or minimize such impacts and if the impacts are “necessary and appropriate to fulfill the purposes of a park, [and] so long as the impact does not constitute impairment of the affected resources and values.” National Park Service 2001 Management Policies § 1.4.3

Another important section of the new Policies is the list of the resources and values that are covered by the non-impairment standard, a portion of which appears below:

“The park’s scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals.”

National Park Service 2001 Management Policies § 1.4.6

The Service’s mandate to provide for the enjoyment of park resources is not limited to educational materials and visual impressions. To the fullest extent possible, the Park Service is to preserve or restore and then make available all of the elements that define a place—elements such as dark night and clear day skies, natural soundscapes, and natural smells. Parks are meant to be places in which the visitor is totally immersed in the experience of place, history, and context. These are to be places where people can escape the sights and sounds that consume their daily lives.

NPCA believes that these resources, experiences, and values are important to the Administration as well. In a speech given in September, 2000 then Governor George Bush stated, “America’s first environmental president, Theodore Roosevelt, talked of the value of ‘silent places, unworn by man.’ These places inspired him—and he inspired our government to protect them. I view protecting America’s ‘silent places’ as an ongoing responsibility, a shared commitment of the American people and our government.”

For these and a host of other significant reasons, NPCA believes that the principles and practices contained within the 2001 Management Policies are essential elements of the Park Service’s management guidance system. As stated earlier, the weakening or elimination of these policies would not only set the Park Service back decades, it would be contrary to Congress’ clear intent regarding the management of our national parks.

We appreciate the opportunity to present this written testimony and look forward to continuing to work with the Subcommittee to ensure that the resources and values of our national park system are preserved unimpaired for the enjoyment of this and future generations.

